

**CABLE MODEM SETTLEMENT AGREEMENT  
AND ACCESS FACILITIES SETTLEMENT AGREEMENT  
DATED DECEMBER 3, 2003**

**WHEREAS**, Comcast of St. Paul, Inc. ("Grantee") holds a nonexclusive ten-year cable system franchise which was issued on May 27, 1998 and effective July 31, 1998, (the "Franchise"), which Franchise further provides that it is subject to and incorporates Chapter 430 of the St. Paul Legislative Code ("Ordinance"); and

**WHEREAS**, the parties have discussed settlement of certain issues related to obligations of Grantee under that Franchise;

**WHEREAS**, one such issue involves the obligation to provide certain public access facilities under Section 304(c) of the Franchise; and

**WHEREAS**, a separate issue involves payments which the City contends that the company is required to make to it under Section 109(e) of the Franchise, and which are the subject of a pending proceeding before the City Council; and while the parties continue to strenuously disagree as to their rights under applicable law they also agree that such disputes may be effectively settled in the context of arrangements for cooperation in the production of programming; and

**WHEREAS**, the parties desire to resolve these and other issues, and the resolution agreed to for any issue does not depend on the resolution of the others.

**NOW, THEREFORE, FOR GOOD AND ADEQUATE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HEREBY AGREE AS FOLLOWS:**

**SECTION ONE.     DEFINITIONS.**

1.1 Generally. The terms used in this Agreement (except where expressly provided otherwise) are defined and shall be interpreted as provided in Section 101 and Section 300 of Grantee's Franchise.

1.2 CPI. The Consumer Price Index for All Urban Consumers for the Minneapolis - St. Paul region, or if that index is no longer published, the closest comparable index published by the Bureau of Labor Statistics.

**SECTION TWO.     RESOLUTION ISSUE REGARDING SPACE AT UNION DEPOT.**

2.1 Public Access Studio. Grantee shall relocate PEG facilities from the Union Depot to a completed space acceptable to the City, which complies with this Agreement and Section 304 as soon as practicable, and no later than February 15, 2005. Grantee has proposed relocating the PEG facilities from Union Depot to 375 Jackson Street, St. Paul, Minnesota 55101 (the "Jackson Space"). The City agrees that the Jackson Space is acceptable as a substitute for the Union Depot space,

subject to the contingencies set forth below. Until the access facilities are relocated Grantee retains all its obligations under Section 304 with respect to the Union Depot space, including but not limited to the obligation to ensure that the space remains commercially habitable. This includes, but is not limited to the obligation to ensure that all parts of the space have adequate heating and cooling.

## 2.2 Contingencies.

2.2.1 The City's acceptance of the Jackson Space is subject to development of a design, layout and leasehold improvements, detail as to how access will be provided to the space, and a move plan acceptable to the City, with specific deadlines for action and the satisfaction of those deadlines. The City will not unreasonably withhold its approval of the foregoing. Approval of the Jackson Space by the City does not limit Grantee's obligation to ensure that the Jackson Space is built out appropriately.

2.2.2 Grantee must enter into a lease satisfactory to the City that ensures that the space will satisfy the requirements of Section 304 and this agreement. The City will not unreasonably withhold its approval of the lease.

2.2.3 The Jackson Space, and any and all improvements thereto, will be subject to inspection by the City for compliance with applicable laws, including but not limited to the City's fire codes and the Americans with Disabilities Act, in light of the purposes to which the space may be put.

2.2.4 The Jackson Space must include at least 9,190 square feet of useable interior space dedicated solely for use of the designated entity; and in addition rooftop space for satellite dishes used by the designated entity; and in addition adequate parking for the public using designated entity facilities and equipment.

2.2.5 Without limiting its obligations under Section 304, Grantee, at its expense, must ensure that:

2.2.5.1 The Jackson Space supports lighting grids and live audiences at least equivalent to those accommodated at the Union Depot location.

2.2.5.2 There is adequate signage at the Jackson Space publicizing the location of the access center, and points of ingress to and egress from the Jackson Space.

2.2.5.3 Subject to reasonable security and safety rules, the designated entity has 24x7 access to the rooftop of the Jackson Space for purposes of repair and maintenance of the designated entity's satellite dish and associated equipment.

2.2.5.4 Studio, training and editing space at the Jackson Space are fully soundproofed, and HVAC and other systems modified

consistent with requirements for high-quality productions in such spaces.

2.2.5.5 Any member of the public will be able to gain access to the Jackson Space and public spaces (such as restrooms) supporting that space at times when the access facility is open without the need for any action by the staff of the designated entity.

2.2.5.6 HVAC and other systems will be configured and operated consistent with the hours of operation of the access center, and in order to maintain equipment and facilities at appropriate temperatures at all times.

2.2.5.7 The designated entity's expenses for the Jackson Space (including but not limited to rents, utilities, building maintenance, insurance and other expenses which the designated entity may be required to bear under the Franchise Section 304(c)-(f)) will be determined according to the formulas, and subject to the caps set forth in Section 304. Operating expenses will be no higher than the expenses for such matters charged to the designated entity in connection with its occupancy of the Union Depot for 2003, adjusted annually beginning in 2005 for the change in the annual average CPI, with 2003 as the reference year.

2.3 Contingencies Not Satisfied. If, for any reason the Jackson Space does not satisfy Section 304; or the contingencies of Section 2.2 of this agreement are not satisfied; or if Grantee is unable to negotiate appropriate arrangements with the owners of the Jackson Space, then Grantee must provide an alternate location that meets each of the requirements of Section 304 of the Franchise and the requirements of this agreement that would have applied with respect to the Jackson Space.

2.4 Continuing Obligation to Provide Space. All obligations that would apply to Grantee with respect to the Union Depot Space apply with respect to the Jackson Space. This includes all obligations arising under Section 304(d). For purposes of applying the franchise obligations, the City will designate 73% of the Jackson Space provided as the "designated space" and 27% as the "expansion space."

2.5 Costs of Move. Grantee recognizes that under Section 304, it is obligated to bear all reasonable costs arising from the relocation to the Jackson Space, which shall include but not be limited to the moving and reinstallation of equipment, providing internal wiring for all systems and devices (and providing for the necessary connections to the entities that provide communications services to the designated entity) and providing for connections to and from the Jackson Space that the company provided or was required to provide to the Union Depot Space (e.g. the HFC and fiber connections to the I-Net and the fiber connection to the headend). The connections must be in place and fully operational by the time the designated entity relocates to the Jackson Space.

**SECTION THREE.**

**RESOLUTION OF CABLE MODEM DISPUTE;  
PROGRAM PRODUCTION COOPERATION  
AGREEMENT**

3.1 Cooperative Studio Venture. In order to help further promote the production of higher quality government programming by the City, and local programming by Grantee, both parties agree to work together to establish a new production studio in City Hall. To this end:

3.1.1 No later than February 15, 2004, Grantee will provide a capital grant to the City of St. Paul in the amount of \$500,000 to develop and support a new programming studio at City Hall and associated facilities and equipment (the "CHCH Studio"). The City will own the studio, facilities and equipment.

3.1.2 In addition to the capital grant required under Section 3.1.1 Grantee shall provide an additional capital grant of \$125,000 no later than June 30, 2005 and another capital grant of \$125,000 no later than June 30, 2006. The capital grant may be used for and in support of the I-Net or public, educational and government use of the Subscriber Network.

3.1.3 The City agrees that, at the same time it begins producing programming in the CHCH Studio, it will provide Grantee access to that studio, its cameras, sound equipment, studio recording equipment, lighting and studio control room for the term of the Franchise in accordance with this Agreement, provided, however, that such access will only be at times when providing access will not interfere with the City's use of the same. To the extent that the CHCH Studio includes storage and waiting/preparation space, the parties will work cooperatively to share that space. Grantee will not have access to any other equipment, including but not limited to editing equipment, playback equipment, routers, or servers. Grantee may not attach its own equipment to the CHCH Studio equipment without the permission of the City, which permission will not be unreasonably denied. Grantee understands that the City does not have and does not intend to supply closed captioning/secondary audio/audio description or similar equipment.

3.1.4 Grantee agrees to share in the costs of operating and maintaining the CHCH Studio by making an annual ongoing payment on June 30 of each year, commencing in 2007 and continuing for the term of the Franchise in the amount of \$10,000 (adjusted annually for any increase in the annual average CPI, with 2003 as the reference year). This payment is owed without regard to whether Grantee actually makes use of the CHCH Studio.

3.1.5 Grantee's use of the CHCH Studio shall be secondary to the City's use of that studio.

3.1.6 Unless otherwise agreed between the City and Grantee, the following conditions will apply to Grantee's use of the facilities:

3.1.6.1 Grantee will have such access only when City Hall is open to the general public.

3.1.6.2 Grantee will follow rules for use of the facilities that are established by the City after consultation with Grantee. If the Grantee fails to follow such rules the City may terminate its right to use the facilities.

3.1.6.3 Scheduling of facilities will be done in a cooperative manner, but ultimate responsibility will be with the City. In that regard, Grantee will schedule use of the facilities with the City at least 5 days but not more than 30 days in advance, unless otherwise agreed by the Office of Cable Communications. Grantee will provide to the City information related to the proposed production for which it intends to use the facilities at the same time as it seeks to schedule use of the facilities, including number of people involved in the production, any audience proposed, total studio time required (including set-up and tear-down time required), and any props and scenery, if any, that the Grantee intends to use. It is Grantee's responsibility to plan its production so that all elements of the production comply with applicable law, including safety codes, and do not interfere with City operations.

3.1.6.4 Grantee is limited to 15 hours per week of CHCH Studio use, except as the parties agree otherwise.

3.1.7 Grantee agrees to indemnify and hold the City harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) incurred by City while Grantee is in the City Hall in conjunction with the utilization of the CHCH Studio, and against any loss, claim, damage or liability Grantee causes while using the City's facilities in conjunction with the utilization of the CHCH Studio.

### 3.2 Advertising Avails.

3.2.1 The timeframe for City utilization of 30-second spot advertising "avails" and production assistance and development of such spots provided for in the July 24, 2002 letter from Dave Seykora to Holly Hansen is extended from December 31, 2003 to June 30, 2004.

3.2.2 The City, at its sole discretion, may elect to receive the \$10,000 value of production assistance and development of spots as advertising "avails" instead of production.

3.3 The City agrees that, in consideration of the value to it provided for in this Section 3, it will release all claims it may have related to the alleged failure of the Grantee to pay franchise fees on cable modem service revenues for the period from March 15, 2002 through and including July 31, 2006, and will likewise release any claim it may have for an alternative payment under Section 202 of the Franchise for that same period.

3.4 Grantee's agreement to this settlement is not a concession that it owed or will owe any money to the City under either Section 109(e) or 202, and Grantee instead agrees that the potential benefits associated with the cooperative programming venture contemplated herein would justify the payments made hereunder. In return for these benefits and the release obtained herein, Grantee releases the City from any claim it may have for return of franchise fees paid on cable modem revenues.

#### **SECTION FOUR. MISCELLANEOUS**

4.1 Franchise Extension. The Franchise, which was scheduled to expire on July 31, 2008, is extended from the scheduled expiration date until July 31, 2013 (the "extension period"), and this extension shall be in lieu of the extension provided for under Section 106(b) of the Franchise. However, if Grantee fails to comply with its obligations under this Agreement, including satisfying deadlines in this Agreement, such extension period may, at the City's discretion, be reduced by a time period of no more than five years. A failure to comply with deadlines in Section Two caused by the designated entity will not be treated as the Grantee's failure to comply for purposes of the condition on the extension.

4.2 Telephone Response Time Settlement. No later than February 15, 2004, Grantee shall pay the City \$22,000, which payment will satisfy any liquidated damages that may be owed under the Franchise and Section Two of the Agreement dated January 12, 2000 between City and Grantee with respect to Comcast's Third Quarter, 2003 compliance with the telephone response reporting and standards set forth in the January 12, 2000 Agreement.

4.3 Grantee's Warranties. The Grantee hereby represents and warrants that: (a) the execution and delivery of this Agreement does not contravene, result in a breach of, or constitute a default under, any contract or agreement to which it is a party or by which it or any of its properties may be bound (nor would such execution and delivery constitute such a default with the passage of time or the giving of notice or both), and does not violate or contravene any law, order, decree, rule, regulation or restriction to which it is subject; (b) it is duly organized, legally existing and in good standing under the laws of the state of its organization; (c) the terms of this Agreement which apply to it constitute legal, valid and binding obligations of it, enforceable in accordance with such terms; and (d) the execution and delivery of, and performance by Grantee under this Agreement is within its power and authority without the joinder or consent of any other party and have been duly authorized by all requisite action and are not in contravention of its charter, bylaws, or other organizational documents, or of any indenture, agreement or undertaking to which it is a party or by which it is bound.

4.4 Advice of Counsel. The parties have carefully read and understand the effect of this Agreement; each of the parties has had the assistance of separate counsel, or has had the opportunity to have the assistance of separate counsel, in carefully reviewing, discussing and considering all terms of this Agreement; and counsel for each of the parties, if any, has read and considered this Agreement and advised such party to execute the same.

4.5 Guarantor. As a condition precedent to the obligations of the City under this Agreement, the Franchise Guarantor must submit a letter, in a form acceptable to the City Attorney agreeing that its guarantee extends to the provisions of this Agreement, and for the extension of the franchise provided for herein.

4.6 Cable Modem Revenue Reporting. Grantee agrees to include revenues received for the provision of cable modem service in the appropriate section of the report provided pursuant to Section 404(f)(3)(B).

4.7 Representations and Warranties Material. Any representations and warranties made in this Agreement are material. It is a material breach of this Agreement if any representation or warranty proves to be untrue, inaccurate or incomplete in any material respect.

4.8 Obligations Not Franchise Fees. City and Grantee agree that none of the costs Grantee must incur, or payments that Grantee must make under this Agreement constitute franchise fees, and instead fall within one or more of the exceptions set out in 47 U.S.C. § 542(g), and each further agrees it will not raise any claim or defense to the contrary, in any forum. Without limiting the materiality of any other provision, it is agreed that the City would not have released its claims without this provision. The parties further agree that, given the benefits received by Grantee, no more than 50% of any payments made under Section 3.1.1 may be included in any line itemization. Except as otherwise provided in this paragraph, Grantee and City otherwise reserve all rights with respect to the treatment of costs and expenses associated with this Agreement for purposes of rate setting and line itemization.

4.9 Binding Agreement. This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executor, receivers, trustees, successors and assigns; the representations and warranties contained herein survive the effective date hereof unless otherwise terminated or superseded by agreement of the parties.

4.10 Governing Law. This Agreement shall be governed in all respects by the law of the State of Minnesota.

4.11 Time of the Essence. In determining whether a party has complied with this Agreement, the parties agree that time is of the essence, except where the Agreement provides otherwise.

4.12 Counterparts. This document may be executed in multiple counterparts, and by the parties hereto on separate counterparts, and each counterpart, when executed and delivered, shall constitute an original agreement enforceable against all who signed it without production of, or accounting for, any other counterpart, and all separate counterparts shall constitute the same agreement.

4.13 Captions. The captions and headings of this Agreement are for convenience and reference purposes only, and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

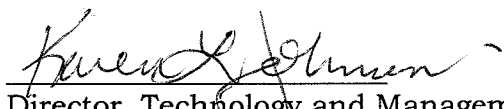
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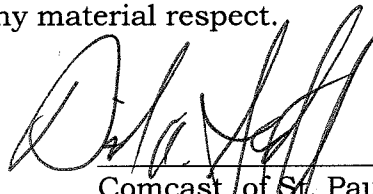
4.14 Cooperation. City and Grantee agree to work cooperatively to effectuate any Franchise amendments necessary in conjunction with this Agreement.

**SECTION FIVE. EFFECT OF FAILURE TO COMPLY WITH THE AGREEMENT.**

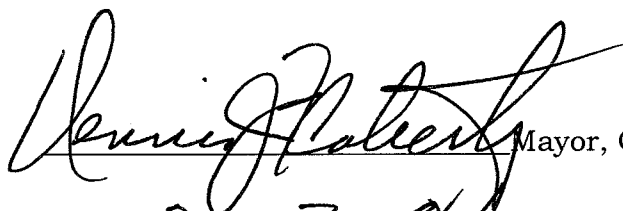
In addition to the City obtaining such damages or equitable relief as may be appropriate, in the event of a breach of this Agreement, the City may apply the remedies under the Franchise. Without limiting the foregoing, if Grantee fails to comply with any material requirement of this Agreement, the Grantee shall be deemed to have substantially and materially violated the Franchise and the Franchise may be revoked. The provisions of the Franchise shall govern any revocation proceeding. However, no opportunity to cure needs to be given prior to revocation if a warranty or representation is false, misleading or incomplete in any material respect.

  
Director, Technology and Management Services  
City of Saint Paul


Date 2-17-04

  
Comcast of St. Paul

Date 2/12/04

  
Mayor, City of St. Paul

Date 2-23-04

  
PPS Director

Date 2/25/04

APPROVED AS TO FORM

  
Assistant City Attorney